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SENATE BILL 10

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

INTRODUCED BY

William E. Sharer

AN ACT

**RELATING TO STATE FINANCES; ENACTING THE ECONOMIC STIMULUS
BONDING ACT; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO
ISSUE ECONOMIC STIMULUS ANTICIPATION BONDS; CREATING A SPECIAL
FUND CONSISTING OF GROSS RECEIPTS TAX DISTRIBUTIONS;
AUTHORIZING THE INVESTMENT OF THE SEVERANCE TAX PERMANENT FUND
IN ECONOMIC STIMULUS ANTICIPATION BONDS; MAKING AN
APPROPRIATION.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 9 of this act may be cited as the "Economic Stimulus
Bonding Act".**

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds that:

(1) the tax decrease effected by the enactment

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1 of Laws 2003, Chapter 2 will provide a long-term economic
2 stimulus to the economy of the state with a resulting increase
3 in state revenues; however, the short-term impact of the tax
4 decrease will be detrimental to general fund balances;

5 (2) the increase in state revenues over the
6 long term can be expected to far exceed the short-term
7 detrimental impact on the general fund; and

8 (3) investment of the severance tax permanent
9 fund at differential rates in order to avoid adverse short-term
10 effects on the general fund and to maintain state services at a
11 high level will help to stimulate the economy and is a proper
12 investment for the fund.

13 B. The purpose of the Economic Stimulus Bonding Act
14 is to invest the severance tax permanent fund in bonds, the
15 proceeds of which shall be used to avoid short-term detrimental
16 impacts caused by the tax decrease and to pay for the bonds
17 with distributions from a special fund composed of
18 distributions of gross receipts tax revenues that reflect a
19 portion of the increased revenues that will result from lower
20 tax rates.

21 Section 3. [NEW MATERIAL] NEW MEXICO FINANCE AUTHORITY TO
22 ISSUE ECONOMIC STIMULUS ANTICIPATION BONDS-- APPROPRIATION OF
23 PROCEEDS-- CONTINGENCY. --

24 A. The New Mexico finance authority is authorized
25 to issue and sell revenue bonds, known as "economic stimulus

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1 anticipation bonds" in an amount not to exceed five hundred
2 million dollars (\$500,000,000), payable solely from the
3 economic stimulus anticipation bonding fund, in compliance with
4 the Economic Stimulus Bonding Act when the secretary of finance
5 and administration certifies that the bond proceeds are needed
6 to offset short-term detrimental effects caused by the
7 enactment of Laws 2003, Chapter 2 and certifies the amount of
8 bond proceeds needed.

9 B. The net proceeds from the economic stimulus
10 anticipation bonds, after reimbursing the New Mexico finance
11 authority for the costs of issuance, are appropriated to the
12 tax-cut impact mitigation fund to be appropriated by the
13 legislature for purposes consistent with the purpose of the
14 Economic Stimulus Bonding Act.

15 Section 4. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
16 BONDING FUND CREATED--MONEY IN THE FUND PLEDGED.--

17 A. The "economic stimulus anticipation bonding
18 fund" is created as a special fund within the New Mexico
19 finance authority. The fund shall be administered by the New
20 Mexico finance authority as a special account. The fund shall
21 consist of money appropriated and transferred to the fund and
22 gross receipts tax revenues distributed to the fund by law.
23 Earnings of the fund shall be credited to the fund. Balances
24 in the fund at the end of any fiscal year shall remain in the
25 fund, except as provided in this section.

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1 B. Money in the economic stimulus anticipation
2 bonding fund is pledged for the payment of principal and
3 interest on all economic stimulus anticipation bonds issued
4 pursuant to the Economic Stimulus Bonding Act. Money in the
5 fund is appropriated to the New Mexico finance authority for
6 the purpose of paying debt service on the economic stimulus
7 anticipation bonds and the expenses incurred in the payment and
8 administration of the bonds.

9 C. On the last day of January and July of each
10 year, the New Mexico finance authority shall estimate the
11 amount needed to make debt service and other payments during
12 the next twelve months from the economic stimulus anticipation
13 bonding fund on the economic stimulus anticipation bonds issued
14 pursuant to the Economic Stimulus Bonding Act plus the amount
15 that may be needed for any required reserves. The New Mexico
16 finance authority shall transfer to the general fund any
17 balance in the economic stimulus anticipation bonding fund
18 above the estimated amounts.

19 D. Any balance remaining in the economic stimulus
20 anticipation bonding fund shall be transferred to the general
21 fund upon certification by the New Mexico finance authority
22 that:

23 (1) the secretary of finance and
24 administration and the New Mexico finance authority have agreed
25 that the economic stimulus anticipation bonds issued pursuant

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1 to the Economic Stimulus Bonding Act have been retired, that no
2 additional obligations of the economic stimulus anticipation
3 bonding fund exist and that no additional expenditures from the
4 fund are necessary; or

5 (2) a court of jurisdiction has ruled that the
6 economic stimulus anticipation bonds have been retired, that no
7 additional obligations of the economic stimulus anticipation
8 bonding fund exist and that no additional expenditures from the
9 fund are necessary.

10 E. The economic stimulus anticipation bonds issued
11 pursuant to the Economic Stimulus Bonding Act shall be payable
12 solely from the economic stimulus anticipation bonding fund or,
13 with the approval of the bond holders, such other special funds
14 as may be provided by law and that do not create an obligation
15 or indebtedness of the state within the meaning of any
16 constitutional provision. No breach of any contractual
17 obligation incurred pursuant to that act shall impose a
18 pecuniary liability or a charge upon the general credit or
19 taxing power of the state, and the bonds are not general
20 obligations for which the state's full faith and credit is
21 pledged.

22 F. The state does hereby pledge that the economic
23 stimulus anticipation bonding fund shall be used only for the
24 purposes specified in this section and pledged first to pay the
25 debt service on the economic stimulus anticipation bonds issued

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1 pursuant to the Economic Stimulus Bonding Act. The state
2 further pledges that any law authorizing the distribution of
3 taxes or other revenues to the economic stimulus anticipation
4 bonding fund or authorizing expenditures from the fund shall
5 not be amended or repealed or otherwise modified so as to
6 impair the bonds to which the economic stimulus anticipation
7 bonding fund is dedicated as provided in this section.

8 Section 5. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
9 BONDS--FORM- EXECUTION. --

10 A. The New Mexico finance authority shall determine
11 at its discretion the terms, covenants and conditions of
12 economic stimulus anticipation bonds, including date of issue,
13 denominations, maturities, rate or rates of interest, call
14 features, call premiums, registration, refundability and other
15 covenants covering the general and technical aspects of the
16 issuance of the bonds except:

17 (1) the bonds shall bear interest at market
18 rates pursuant to Section 7-27-5 NMSA 1978;

19 (2) the bonds shall have a maturity of no more
20 than thirteen years from the date of issue;

21 (3) the bonds shall provide that debt service
22 payments shall not be due within three years from the date of
23 issue;

24 (4) the bonds shall provide for prepayment in
25 part or in full of the balance due at any time without penalty;

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1 and

2 (5) as otherwise specifically provided in the
3 Economic Stimulus Bonding Act.

4 B. The economic stimulus anticipation bonds shall
5 be in such form as the New Mexico finance authority may
6 determine, and successive issues shall be identified by
7 alphabetical, numerical or other proper series designation.

8 C. Economic stimulus anticipation bonds shall be
9 signed and attested by the secretary of the New Mexico finance
10 authority and shall be executed with the facsimile signature of
11 the chairman of the New Mexico finance authority and the
12 facsimile seal of the New Mexico finance authority, except for
13 bonds issued in book entry or similar form without the delivery
14 of physical securities. Any interest coupons attached to the
15 bonds shall bear the facsimile signature of the secretary of
16 the New Mexico finance authority, which officer, by the
17 execution of the bonds, shall adopt as his own signature the
18 facsimile thereof appearing on the coupons. Except for bonds
19 issued in book entry or similar form without the delivery of
20 physical securities, the Uniform Facsimile Signature of Public
21 Officials Act shall apply, and the New Mexico finance authority
22 shall determine the manual signature to be affixed on the
23 bonds.

24 Section 6. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
25 BONDS-- SALE. -- Economic stimulus anticipation bonds may be sold

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1 only at a private sale and only to the state investment
2 officer.

3 Section 7. [NEW MATERIAL] ECONOMIC STIMULUS BONDING ACT
4 IS FULL AUTHORITY FOR ISSUANCE OF BONDS--SUIT TO COMPEL
5 PERFORMANCE. --

6 A. The Economic Stimulus Bonding Act shall, without
7 reference to any other act of the legislature, be full
8 authority for the issuance and sale of economic stimulus
9 anticipation bonds, which bonds shall have all the qualities of
10 investment securities under the Uniform Commercial Code and
11 shall not be invalid for any irregularity or defect or be
12 contestable in the hands of bona fide purchasers or holders
13 thereof for value.

14 B. Any holder of economic stimulus anticipation
15 bonds or any person or officer being a party in interest may
16 sue to enforce and compel the performance of the provisions of
17 the Economic Stimulus Bonding Act.

18 Section 8. [NEW MATERIAL] DETERMINATION OF EXCESS
19 REVENUES--PREPAYMENT. --

20 A. As soon as practicable after October 1, 2004 and
21 October 1 of each subsequent year in which any economic
22 stimulus anticipation bonds remain outstanding, the secretary
23 of finance and administration shall:

24 (1) subtract five percent of the general fund
25 appropriations made for expenditure in the prior fiscal year

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1 from the unencumbered or unexpended balances of general fund
2 revenues remaining at the end of that prior fiscal year; and

3 (2) transfer twenty-five percent of the amount
4 calculated pursuant to Paragraph (1) of this subsection to the
5 economic stimulus anticipation bonding fund.

6 B. Immediately upon a transfer made pursuant to
7 Subsection A of this section, the New Mexico finance authority
8 shall use the entire amount transferred to make prepayments on
9 outstanding economic stimulus anticipation bonds.

10 Section 9. [NEW MATERIAL] TAX-CUT IMPACT MITIGATION
11 FUND--CREATED--PURPOSE. --The "tax-cut impact mitigation fund",
12 consisting of proceeds from the sale of economic stimulus
13 anticipation bonds, is created in the state treasury. The fund
14 shall be subject to appropriation by the legislature to
15 mitigate adverse short-term effects of the tax decrease
16 resulting from the enactment into law of Laws 2003, Chapter 2.
17 Balances in the fund shall not revert. Upon certification by
18 the New Mexico finance authority that all economic stimulus
19 anticipation bonds have been retired, any unexpended or
20 unencumbered balance remaining in the fund shall be transferred
21 to the general fund.

22 Section 10. A new section of the Tax Administration Act
23 is enacted to read:

24 "[NEW MATERIAL] DISTRIBUTION--ECONOMIC STIMULUS
25 ANTICIPATION BONDING FUND--GROSS RECEIPTS TAX. --Upon

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1 certification by the secretary of the New Mexico finance
2 authority to the secretary of taxation and revenue that
3 economic stimulus anticipation bonds have been issued pursuant
4 to the Economic Stimulus Bonding Act and that debt service on
5 the bonds is due within the next twelve months, a distribution
6 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
7 economic stimulus anticipation bonding fund in the amount of
8 five million five hundred thousand dollars (\$5,500,000) from
9 the net receipts attributable to the gross receipts tax imposed
10 by the Gross Receipts and Compensating Tax Act. The
11 distribution shall be made:

12 A. after the required distribution pursuant to
13 Section 7-1-6.4 NMSA 1978;

14 B. contemporaneously with other distributions of
15 net receipts attributable to the gross receipts tax for payment
16 of debt service on outstanding bonds or to a fund dedicated for
17 that purpose; and

18 C. prior to any other distribution of net receipts
19 attributable to the gross receipts tax."

20 Section 11. Section 7-27-5 NMSA 1978 (being Laws 1983,
21 Chapter 306, Section 7, as amended) is amended to read:

22 "7-27-5. INVESTMENT OF SEVERANCE TAX PERMANENT FUND. -- The
23 severance tax permanent fund shall be invested for two general
24 purposes, to provide income to the fund and to stimulate the
25 economy of New Mexico, preferably on a continuing basis. The

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1 investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall
2 be those intended to provide maximum income to the fund and
3 shall be referred to as the market rate investments. The
4 investments permitted in Sections 7-27-5.3 through 7-27-5.5,
5 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 through
6 [~~7-27-5.26~~] 7-27-5.27 NMSA 1978 shall be those intended to
7 stimulate the economy of New Mexico and shall be referred to as
8 the differential rate investments. The prudent man rule shall
9 be applied to the market rate investments, and the state
10 investment officer shall keep separate records of the earnings
11 of the market rate investments. All transactions entered into
12 on or after July 1, 1991 shall be accounted for in accordance
13 with generally accepted accounting principles. "

14 Section 12. A new section of the Severance Tax Bonding
15 Act, Section 7-27-5.27 NMSA 1978, is enacted to read:

16 "7-27-5.27. [NEW MATERIAL] ECONOMIC STIMULUS ANTICIPATION
17 BONDS. --Subject to the approval of the state investment
18 council, the severance tax permanent fund may be invested in
19 economic stimulus anticipation bonds issued by the New Mexico
20 finance authority pursuant to the Economic Stimulus Bonding
21 Act. "